AMENDMENTS TO THE DRAWINGS

Figure 3 has been amended to illustrate reference numeral 18. The revised figure is attached herewith.

REMARKS

I. Status of the Claims

Claim 12 has been cancelled and claim 13 was previously cancelled, both without prejudice or disclaimer of the subject matter therein.

Claims 1, 8, 17 and 21 have been amended. No new matter has been added.

Claims 1-11 and 14-22 are pending.

Claims 1, 8 and 21 have been objected to for informalities. Applicants have amended the claims along the lines suggested by the Examiner and respectfully submit that the objection has been addressed and request that the objection be withdrawn.

II. Status of the Drawings

Figure 3 has been amended to illustrate reference numeral 18 enumerating the arc-shaped elongated probe. Reference numeral 18 was present in Figure 3 as filed and was accidentally omitted upon the submission of the Formal Drawings. Support for this amendment is Figure 3, as filed, and in the Specification, page 15, lines 11-17. No new matter is added.

III. Acknowledgement of Allowable Subject Matter

Applicants thank the Examiner for the indication of allowable subject matter in claims 1-12, 14-16 and 22. Claim 12 has been cancelled and claims 1, 8, and 21 have been amended to overcome the Examiner's objections and the rejections under 35 U.S.C. § 112. Claims 1-11, 14-17 and 22 are in condition for allowance.

IV. Telephone Interview

Applicants thank the Examiner for all of the courtesies extended to Applicants' representative, Louis DelJuidice, during the interview of September 22, 2005. Applicants thank the Examiner for discussing the claims and the prior art of record.

V. Rejections Under 35 U.S.C. § 112, Second Paragraph

Claim 1 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for omitting the relationship between the actuation switch and the remaining elements of the axillary thermometer.

Applicants have amended claim 1 to include some of the structural interrelationships defined in claim 12 and respectfully submit that the relationship of the actuation switch to the remaining elements has been clarified. Accordingly, Applicants respectfully request that this rejection be withdrawn.

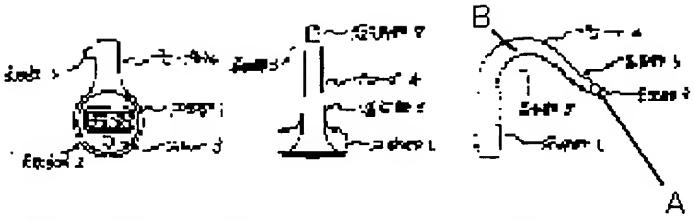
VI. Rejections Under 35 U.S.C. § 103(a)

Claims 17-21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Japanese Patent Publication No. 61-270631 (hereinafter "JP '631") in view of U.S. Publication No. 2003/0002562 to Yerlikaya et al. (hereinafter "Yerlikaya"). Applicants respectfully traverse this rejection.

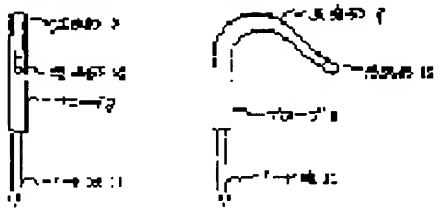
Claims 17 and 21 both recite that the temperature sensor is disposed on the circumferential edge of the respective member. Claim 17 recites that "the first member further having at least one temperature sensor on the circumferential edge of the upper portion" and claim 21 recites that "the disk-shaped member further comprising at least one temperature sensor positionable at any of a

plurality of positions along the circumferential edge." Applicants address the Examiner's comments from the telephone interview, in that the "temperature sensor," as recited in the claims, is the portion of the device that contacts the patient and senses the patient's temperature. This is clearly defined in the Specification and Figures. Reference numeral 6 specifically indicates the sensor and the Specification supports the normal, ordinary meaning of a "temperature sensor" which is a sensor "placed in contact with [a] region to obtain the temperature thereof." Specification, page 7, lines 12-13. *Also see*, at least, Specification, page 4, lines 3-9 and page 12, lines 3-8. Contrary to the Examiner's statement, the "temperature sensor" is not the entire probe section. Applicants distinguish between a temperature sensor and the probe section. The probe section is noted as reference numeral 18 and is clearly defined as a separate element in the Specification. *See*, Specification, page 15, lines 11-17 and Figure 3.

In contrast, the temperature sensor in JP '631 is not on a circumference of its member. The temperature sensor is disposed on the end or tip of the probe section. As illustrated below, temperature sensor A is on the tip of probe section B.



第 1 図(a) 第 1 図(b) 第 1 図(c)



第 2 図(a) 第 2 図(b)

Thus, JP '631 does not disclose or suggest placing a temperature sensor on the circumference of the member on which it is disposed.

Further, claim 17 recites that the first member is "shaped to be disposed in the axillary region for taking the temperature of a patient." In contrast, the thermometer disclosed in JP '631 is specifically designed for oral use only. The abstract of JP '631 is reproduced below, discussing the specific shape designed for oral use.

> PURPOSE: To realize more accurate thermometry without throwing any strength into the mouth during the thermometry by curving the probe of a clinical thermometer at one or more positions and easily inserting it into the mouth. CONSTITUTION: When a curved part 5 is put between the upper lip 12 and lower lip 13, the curved part 5 becomes a fulcrum naturally and the thermometer is pressed against the chin 15 by the weight of the main body 1. At this time, a temperature sensing part 7 which has its upper limit direction bent slightly by the curved part 6 is pressed naturally against the tongue 14 and contacts it easily. Further, the whole thermometer is fixed by the friction between the main part 1 and chin 15 and the upper lip 12 to perform stable thermometry. Thus, easy and accurate thermometry is realized. (Emphasis added).

Applicants further submit that the shape of the JP '631 thermometer prevents it from being disposed in and accurately taking an axillary temperature. If the probe is inserted so the digital display is approximately perpendicular to the ribs, the upper curve of the probe region B disposes the temperature sensor outside the axillary region. If the upper curve is not introduced under the arm pit, the temperature sensor cannot reach the axillary region. Further, if the thermometer is introduced "upside down" then the user cannot read the temperature.

Furthermore, regarding Yerlikaya, Applicants submit that the reference actually teaches away from using JP '631 as an axillary thermometer. The purpose of Yerlikaya's invention is to prevent a thermometer from being reused in different orifices. Yerlikaya specifically teaches that:

> In typical use, prior art electronic thermometers are susceptible to at least three major sources of contamination. First, these thermometers employ the same temperature sensitive probes for oral, rectal and axillary temperature measurements. Even though disposable plastic probe covers are used for each measurement, cross-contamination may still result from use of the same probe. Therefore, rectal or axillary contaminants on the probe may be passed orally to the same and/or other patients.

Yerlikaya, paragraph [0005]. Thus, Yerlikaya teaches away from using an oral thermometer as an axillary thermometer. JP '631 specifically discloses an oral thermometer and in view of Yerlikaya's teaching, one of ordinary skill in the art would be taught away from using JP '631 to read an axillary temperature.

Applicants submit that claims 17 and 21 are not anticipated or unpatentable in view of JP '631 and Yerlikaya since the references do not teach or suggest every element of the claims and further teach away from claim 17. Additionally, claims 18-20 depend from claim 17 and are allowable based at least on the same reason as claim 17. Applicants request that this rejection be withdrawn.

CONCLUSION

In view of the above amendments and remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining, which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Dated: November 7, 2005

Respectfully submitted,

By _____

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